

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.622(b))	MM Docket No. 00-121
Table of Allotments)	RM-9674
Digital Television Broadcast Stations)	
(Kingston, New York))	
)	
WRNN-TV Associates Limited Partnership)	File No. BPCDT-20020130AAQ
)	
For a Construction Permit)	
for Digital Television Broadcast Station)	
WRNN-DT, Kingston, New York)	

MEMORANDUM OPINION AND ORDER

Adopted: August 20, 2003

Released: September 5, 2003

By the Commission:

1. The Commission has before it an Application for Review filed by WKOB Communications, Inc. ("WKOB"), licensee of WKOB-LP, New York, New York, regarding the change in the digital television channel allotment for WRNN-TV, Kingston, New York, from DTV Channel 21 to DTV Channel 48. *See Report and Order, Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Kingston, New York)*, 17 FCC Rcd 1485 (MB 2002), *reconsideration denied*, 17 FCC Rcd 14326 (MB 2002). WRNN-TV Associates Limited Partnership ("WRNN"), licensee of WRNN-TV, filed an opposition to WKOB's pleading, and WKOB filed a reply thereto.¹

2. As set forth in greater detail in the *Report and Order*, WKOB opposed WRNN's DTV channel change proposal on the basis that it would effectively displace WKOB-LP's operation on Channel 48 in New York City. Nevertheless, the Chief, Video Division, acting pursuant to delegated authority, found that WKOB-LP, as a secondary service, was not entitled to protection from WRNN's digital proposal. Moreover, inasmuch as WRNN's proposed channel change met city-grade service and interference protection requirements and otherwise furthered the Commission's goals with respect to the establishment of digital television service, the staff

¹ WRNN's DTV Channel 48 construction permit application (BPCDT-20020130AAQ) was granted on August 16, 2002. WKOB has filed with the Media Bureau a Petition for Reconsideration and a Motion for Stay of the grant of the WRNN construction permit, seeking reversal on the basis of the issues raised in the subject Application for Review. On our own motion, we incorporate those pleadings into this proceeding for disposition.

determined that the requested channel change was in the public interest and it was therefore approved.

3. WKOB sought reconsideration of the staff's action. It alleged that the staff relied on facts concerning interference reduction in approving the channel change which, in light of the specific modifications requested in WRNN's implementing construction permit application, are erroneous. Specifically, it argued that while WRNN's rulemaking proposal proposed various interference reductions toward Long Island, its implementing construction permit application proposed to increase instances of interference. WKOB also asserted that the staff erred by "summarily dismissing" WKOB-LP's status as a low power station² and "ignoring" or "changing" without adequate explanation the Commission's policy of ensuring that digital station allotments do not have an unnecessary adverse impact on low power operations.

4. WKOB's reconsideration petition was denied.³ The staff explained that when a party seeks to amend the Table of Allotments, hypothetical reference coordinates and facilities are used for purposes of making the allotment. The rulemaking proponent is not required to specify an actual transmitter site from which the station would be operated, only a theoretically fully spaced transmitter site location, *i.e.*, a site from which it affords appropriate signal coverage and interference protection. Inasmuch as WRNN's rulemaking proposal met all such signal coverage and interference requirements, the channel change was not premised on interference reduction as WKOB claimed. As to WKOB's primary objection that protection was not afforded to its low power station in the adoption of this rulemaking proposal, the staff again explained that WKOB-LP is a secondary service and, as such, is simply not entitled to the level of protection it desires. The staff also explained that that is not a change or misapplication of Commission policy.⁴

5. WKOB raises the same arguments in its Application for Review, and reiterates its claim that the staff exceeded its authority and acted arbitrarily and capriciously in applying the Commission's policy regarding interference protection to be afforded LPTV stations. In addition, those arguments form the basis of WKOB's request to reconsider the grant of the WRNN construction permit and to stay the effectiveness of that action.

² As noted in the *Report and Order*, WKOB was denied eligibility for Class A Low Power Television Status, which would have entitled WKOB-LP to additional interference protections. Its subsequent petition for reconsideration of that decision was denied, and the Commission denied its subsequent application for review on January 11, 2002. See *WKOB Communications, Inc., Debtor-in Possession*, 17 FCC Rcd 1127 (2002). Its petition seeking reconsideration of the Commission's Order was dismissed on September 30, 2002 pursuant to Section 1.106(b)(3) of the Commission's Rules.

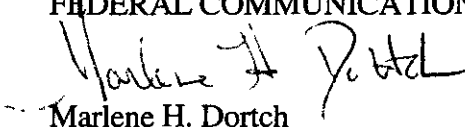
³ WKOB also filed a motion to stay the effective date of the *Report and Order*, which was also denied in conjunction with the denial of its petition for reconsideration.

⁴ The staff referenced *Establishment of a Class A Service*, wherein the Commission specifically noted the possible impact on non-Class A low power stations in urban areas even to the extent that they might be forced from the air if a suitable displacement channel were not available. 15 FCC Rcd 6355, 6359 (2000), *clarified on recon.*, 16 FCC Rcd 8244, 8246-47 (2001).

6. We find that WKOB has not specified, as required by our rules, any factors that warrant Commission review. See 47 C.F.R. §1.115(b)(2). WKOB raises the same arguments here as it has previously with respect to the degree of interference protection afforded low power television stations. While the Commission stated in *Advanced Television Systems* that proposed modifications to the DTV Table of Allotments should avoid, where possible, impacting low power stations,⁵ this did not change the secondary nature of such stations. In *Establishment of a Class A Service*, the Commission later announced that low power television facilities will be protected from interference from primary stations only to the extent that they receive, or are eligible to receive, Class A status.⁶ This policy is applied with respect to all primary broadcast stations, including those seeking to modify the DTV Table of Allotments. WKOB-LP is a secondary service that has not been accorded and is not eligible for Class A status. Therefore, that station is simply not entitled to the degree of protection from interference that WKOB desires with respect to the WRNN-TV facilities modification. Moreover, when the Commission implemented the Class A station protection policy, it did so with the knowledge that its effectuation "would have significant adverse effects on many stations, particularly LPTV stations operating in urban areas where there are few, if any, available replacement channels for displaced stations."⁷ WKOB was well aware of that possibility when it sought to obtain Channel 48 in New York City as a displacement channel for WKOB-LP. The fact that it was a winning bidder at auction for that channel does not entitle WKOB-LP to more protection than it would otherwise be afforded, nor does it justify deviation from the Commission's DTV implementation policies in this case. Those arguments were thoroughly considered and properly resolved by the staff, and we uphold the staff's decisions for the reasons stated therein.

7. Accordingly, IT IS ORDERED, That the Application for Review of the change in the digital television channel allotment for WRNN-TV, and the Petition for Reconsideration and the Motion for Stay of the grant the WRNN-DT construction permit application (File No. BPCDT-20020130AAQ) filed by WKOB Communications, Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Marlene H. Dortch
Secretary

⁵ *Advanced Television Systems*, 12 FCC Rcd 14588 (1997)

⁶ 15 FCC Rcd 6355, 6370-71 (2000), *clarified on recon.*, 16 FCC Rcd 8244 (2001).

⁷ See footnote 4, *supra*. In addition, the Public Notice announcing the auction by which WKOB obtained low power DTV Channel 48 at New York City cautioned all bidders to perform their individual due diligence to investigate and evaluate all technical and marketplace factors that may impact the facilities on which they intend to bid. In that regard, the Commission also specifically noted it makes no representations or warranties about the use of the auctioned spectrum for particular services. Public Notice, *Closed Broadcast Auctions*, DA 99-1346 (released July 9, 1999).